



DEFENSE FINANCE AND ACCOUNTING SERVICE

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APR 13 2000

DFAS-HQ/FMM

MEMORANDUM FOR DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE
CLEVELAND CENTER
DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE
DENVER CENTER

SUBJECT: Update to the Department of Defense Financial
Management Regulation (DoDFMR), Volume 7B, Regarding
Physical or Mental Incapacitation (DFAS Item I- 84)

This is DFAS Interim Change Number R03-00 to the DoDFMR,
Volume 7B. This change is effective immediately.

We have evaluated your comments on the draft change to the
DoDFMR, Volume 7B. The attached final version of the change
includes your comments where appropriate. Assignment of an
interim change number is your authority to start a procedural
modification, if necessary, to facilitate this change. For
Denver Center, use the attached to initiate the formal change to
the DoDFMR, Volume 7B.


Gregory P. Bitz
Director for Finance

Attachment:
As stated

cc: DASD (MMP) (COMP)
OUSD (C) ODCFO (FC)
ODGC (F)
DFAS-HQ/DMP
DFAS-DE/DG
Service Liaisons
USCG/NOAA/PHS Liaisons
DFAS-HQ/DMP

1. Change paragraph 160304. to read:

“160304. The convening authority of the appropriate military service shall send one copy of the board’s findings, as applicable, to:

Director, DFAS-Cleveland Center, ATTN: DFAS-CL/G, Office of General Counsel, P.O. Box 998006, Room 2829, Cleveland OH 44199-8006.”

2. Delete the current Section 1604 and replace with the following:

“1604 APPOINTMENT OF TRUSTEE

160401. The authority of the Secretaries of the Military Departments to appoint trustees under 37 U.S.C. 602 has been delegated to the Director, DFAS-Cleveland Center.

160402. The Director, DFAS-Cleveland Center may designate one of the following persons as trustee for all incompetent military retirees if the trustee is 21 years of age or over:

- A. Lawful spouse (not subject to age requirement)
- B. Legitimate son or daughter or legally adopted son or daughter.
- C. Parents
- D. Head of an institution, if member is a patient
- E. Any other person or persons if in the best interest of the member.

160403. All applications to appoint a trustee and related documentation should be submitted to DFAS-CL, Code G, Office of General Counsel, P.O. Box 998006, Room 2829, Cleveland, OH 44199-8006.

160404. While next of kin or other relative of the retiree ordinarily is preferred for designation as trustee, any other person, willing and suitable to act as such, may be designated as temporary or permanent trustee unless a committee, guardian, or other legal representative is appointed by a court of competent jurisdiction. If more than one qualified person applies to be named as trustee for a mentally incompetent retiree, the Director, DFAS-Cleveland Center shall determine which applicant is a more appropriate trustee.

160405. The trustee designated to receive monies in behalf of the incompetent retiree must furnish a suitable bond in all cases when the amounts to be received may be expected to exceed \$1,000. The bond so required and furnished must have, as the surety, a company approved by the U.S. Government and must be in such amount as required by the Office of General Counsel, DFAS-CL. The person who has been designated as trustee acts in this capacity without remuneration. However, if a bond is required, the premium fee charged by the bonding company may be paid from the funds received on behalf of the mentally incompetent retiree.

Any other expenses incurred in securing the bond may not, however, be paid from the amount payable to the incompetent retiree.

160406. The trustee appointed by the Office of General Counsel, DFAS-CL has the authority only to receive, expend, and account for monies received from the Military; the appointment does not convey authority to act as a trustee in a civilian capacity without prior authority from a court of competent jurisdiction. The trustee must use the monies received for the benefit of the incompetent retiree. The government may not appoint a trustee in any case in which a court of competent jurisdiction has appointed a legal committee, guardian or other representative.

160407. The designated trustee submits accounting reports annually or at such times as directed by the Office of General Counsel, DFAS-CL. The reports must show all funds received, all expenditures made in behalf of the incompetent retiree, and a statement of the condition of the trustee account at the time the report is submitted. The trustee also may be required to provide all receipts, cancelled checks, or voucher accounts, savings account pass books or statements, or any other records concerning the trustee account. If the trustee fails to report promptly at the end of the accounting period, the appointing authority may either temporarily suspend or terminate further payments to the trustee, and may designate a successor trustee.

160408. Payments due an incompetent retiree cease to be paid to the trustee upon receipt of notification by the DFAS-Cleveland Center of:

- A. death of the incompetent;
- B. death or disability of the trustee;
- C. receipt of notice that a committee, guardian, or other legal representative has been appointed for the incompetent by a court of competent jurisdiction;
- D. failure of a trustee to render required accounting reports;
- E. probable cause to believe that there is improper use of monies received on behalf of the incompetent; or
- F. receipt of notification that a board of medical officers or other appropriate medical authorities has now found the retiree to be capable of managing his or her own affairs. The appointing authority may, at his or her discretion, accept the findings of a Department of Veterans Affairs or Public Health Service medical facility, or the findings of other public or private medical facilities, that a person formerly found incompetent is now competent.
- G. If payments are terminated under subparagraph B, D, or E, above, the Office of General Counsel, DFAS Cleveland Center may appoint a successor trustee. Upon death or disability of a trustee, the trustee's legal representative makes the final accounting report.

160409. When payments cease to be paid to the trustee, as described in paragraph 160408, above, the trustee files a final accounting report with the Office of General Counsel, DFAS Cleveland Center. When the final accounting report has been approved, the trustee is discharged and the surety released of its bond.

160410. Upon the death of the incompetent retiree, any funds remaining in the fiduciary account, maintained on behalf of the incompetent retiree by the trustee, must be made payable to the deceased retiree's estate."

3. Change the reference in **paragraph 160503** from "paragraph 160408" to read "**paragraph 160407.**"

4. Change the sentence in **section 1607** to read the following:

"Once the appointment of trustee, guardian, committee, etc., has been made, the DFAS Cleveland Center shall change or update the account per the appropriate provisions of this regulation."

5. Add a new second sentence to **paragraph 370402** to read:

"...appointment. For cases involving appointment of a representative payee for a legally disabled person for whom a legal guardian has not been appointed, see paragraph 460103C of this volume."

6. Change the last sentence of **paragraph 460103.C.3.** to read:

"...payable. A surety bond ordinarily will not be required if the representative payee is a close family member, a government agency, a financial institution, or a medical, nursing or similar health care facility."

7. Change the second sentence of **paragraph 460103.C.4.** to read:

"If the representative payee is a close family member, government or financial institution, or a medical, nursing or similar health care facility, a periodic accounting will not normally be required."

8. Change the first sentence of **paragraph 460103.C.4.c.** to read:

c. If the Secretary concerned has evidence to suggest that the annuity funds have been or are being misused by the representative payee, the annuity may be suspended and an accounting may be required from the payee."

9. Change the current **paragraphs 460103.C.5.f** and **460103.C.5.g** to new **paragraphs 460103.C.5.h** and **460103C.5.i** respectively.

10. Add the following new **paragraphs**:

“**460103.C.5.f.** official of a financial institution

460103.C.5.g. official of a medical, nursing or similar health care facility”

11. Change **paragraph 460103.C.6.** to read:

“**460103.C.6.** In addition to SBP annuity payments (including payments to Minimum Income Widows covered under Chapter 51 of this volume), annuity payments under USCOA, RSFPP, RCSBP, and ACMSS also may be made to a representative payee.”

12. Add the following to the **Bibliography**:

| <u>“Paragraph</u> | <u>Citation</u> |
|-------------------|--------------------|
| Section 1604 | 37 U.S.C. 601-604” |